



## STATE BOARD OF EQUALIZATION

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Executive Director

August 15, 1997

In Re: Change in Ownership - Distribution of Real Property from Dissolved Partnership to Surviving Spouse and Sons

Dear Mr. :

This is in response to Mr. letter of May 30, 1997 letter to Mr. Lawrence Augusta, in which, he requested our opinion concerning the application of the proportional interest exclusion in Section 62(a)(2) and the interspousal exclusion in Section 63 to the distribution of real property from a family-owned partnership to the surviving spouse and children. Mr. provided the following facts for purposes of our analysis:

1. Husband and Wife held as community property five parcels of real property which they transferred into a general partnership ("HW Partnership") in 1992, in exchange for equivalent 50% ownership interests in the partnership.

2. Husband and Wife thereafter formed Revocable Living Trust ("HW Trust"), in which they were the sole present beneficiaries, and they transferred their partnership interests into the Trust.

3. Later in 1992, H and W transferred 3% of their total partnership interests in HW Partnership to their three sons, equal to 1% to each son. Thus, H and W each held 48.5% interests and Sons each held a 1% interest in HW Partnership.

4. In 1995, HW Partnership distributed one of the five parcels of real property pro rata to each of the five partners as tenants-in-common, such that following the transfer each held title to

the parcel in exactly the same proportional ownership interests as they held in the partnership prior to the transfer:

5. In January 1996, Wife died and HW Partnership dissolved based on the terms of the partnership agreement. To implement the dissolution and liquidation, HW Partnership distributed its four parcels of real property pro rata to each of the three Sons and to the Husband, as sole beneficiary of the Marital Trust and the Survivor's Trust, as tenants-in-common, so that following the transfer each held title to the parcels in exactly the same proportional ownership interests as they held in the partnership prior to the transfer. Since HW Trust provided that upon Wife's death, her one-half of the community property is distributed to the Marital Trust (presumably irrevocable) for Husband's sole benefit for life, and that his one-half of the community property is distributed to a revocable Survivor's Trust also for Husband's sole benefit, Husband received from the dissolved HW Partnership a total of 97% of the interests in each of the four parcels, in tenancy-in-common as the sole present beneficiary of each trust.

Based upon foregoing, you pose the following questions:

(1) Is the 1995 transfer of one parcel from the HW Partnership "original coowners" to the five partners as tenants-in-common in the same proportionate shares "counted" toward a change in ownership under Section 64(d)?

(2) Is Husband's acquisition of more than 50% of the HW Partnership interests upon Wife's death excluded from change in control (Section 64(c)) or from change in ownership (Section 64(d)) under Section 63 or for any other reason?

(3) Is the distribution of the HW Partnership real property to the remaining four partners as tenants-in-common excluded from change in ownership under Section 62(a)(2) or for any other reason?

For the reasons hereinafter explained, the answer to the first question is no and the answer to both the second and third question is yes: the interspousal exclusion in Section 63 applies to the transfer of Wife's interests to Husband and to his acquisition of HW Partnership control under Section 64(c), and the proportional interest exclusion in Section 62(a)(2) applies to the real property distributed to the remaining partners as tenants-in-common.

### **LAW AND ANALYSIS**

Section 60 defines a change in ownership as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Under Section 61, subdivision (j), a change in ownership includes:

The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

This is applied to partnerships specifically in Rule 462.180 (e)(1), with the exception of proportional interest transfers excluded under Rule 462.180 (b)(2).

Based upon this rule and Section 61(j), HW Partnership was involved in three transfers which constituted changes in ownership: 1) the 1995 pro rata transfer of one parcel to each of the partners as tenants-in-common; 2) the 1996 transfer of Wife's 48.5% partnership interests to Husband as the result of her death, aggregating to 97% HW Partnership interests in Husband; and 3) the 1996 rata distribution of the four parcels from dissolved HW Partnership to the four remaining partners as tenants-in-common. In our view, specific change in ownership exclusions are applicable to each.

**1. 1995 Transfer of One Parcel from HW Partnership to Partners Excluded under Section 62(a)(2).**

Section 62 (a)(2) provides an exclusion from change in ownership for proportional interest transfers between individuals and a legal entity which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, in each and every piece of real property remain the same after the transfer. See also Rule 462.180 (b)(2).

This exclusion is applicable to the 1995 one-parcel transfer from HW Partnership to the partners as tenants-in-common since the percentage of ownership interests in the parcel transferred apparently remained exactly the same as the interests each of them held in HW Partnership. That is, H and W presumably received 48.5% each and Sons received 1% each, consistent with their respective partnership interests.

The question, however, is whether any of the interests transferred were HW Partnership interests which must be "counted" for purposes of determining a change in ownership under Section 64(d) since H and W were "original coowners." With regard to transfers made by "original co-owners" in a legal entity, Section 64(d) provides as follows:

If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original co-owners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original co-owners in one or more property transactions, a change in ownership of that real property owned by the legal entity shall have

occurred, and the property which was previously excluded from change in ownership under the provisions of Section 62(a)(2) shall be reappraised.

Applying this provision to the instant case, when H and W created the HW Partnership in 1992 and transferred to it the five parcels they owned as community property, that transfer was excluded from change in ownership under Section 62(a)(2), with the result that they became "original coowners" at that time. As "original co-owners," if they or HW Partnership **cumulatively transferred more than 50% of the total partnership interests**, then Section 64(d) mandates that the property previously excluded under Section 62(a)(2) will undergo a change in ownership and be reappraised.

Based on the description in your letter, there is no indication that the 1995 one-parcel transfer consisted of any partnership interests from HW Partnership, but only **real property interests** were transferred. By its express terms, Section 64(d) does not apply to transfers of interests in real property, only to "shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity." Since no partnership interests were transferred in 1995, Section 64(d) is not applicable, and the real property interests transferred would not be counted for purposes of determining a subsequent change in ownership.

**2. Husband's Acquisition of more than 50% of HW Partnership Interests upon Wife's death. Excluded from Change in Control under Section 63.**

Two events triggering a change in ownership occurred upon Wife's death in 1996. First, the HW Revocable Trust presumably became irrevocable. Included as a change in ownership under Section 61(h) is the transfer of "any interests in real property that vest in persons other than the trustor (or, pursuant to Section 63, his or her spouse) when a revocable trust becomes irrevocable." Similarly, under Rule 462.160(b)(2) and (4), a change in ownership occurs upon the transfer of real property or ownership interests in a legal entity whenever a revocable trust becomes irrevocable, unless the trustor-transferor or his/her spouse remains or becomes the sole present beneficiary. Since Husband "became the sole present beneficiary" upon Wife's death, it is clear that Section 63 excluded from change in ownership any transfers to him when the HW Revocable Trust became irrevocable.

Second, as the result of receiving Wife's 48.5% of the partnership interests, Husband received "control" of HW Partnership by acquiring 97% of its total interests. Such "change in control" results in reappraisal of the property owned by the partnership unless an exclusion is applicable.<sup>1</sup>

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<sup>1</sup> Section 64(c) states: "When a corporation, partnership, limited liability company, or other legal entity or any other person obtains control, through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority interest in any partnership, limited liability company or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, ... the purchase

"Control" is defined and applied to partnerships in Rule 462.180(c), which states in part:

(c) Except as is otherwise provided in subdivision (d), the purchase or transfer of corporate stock, partnership shares, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity.

(d) **Exceptions:**

(1) When any corporation, partnership, other legal entity or any person:

\* \* \*

(B) obtains direct or indirect ownership of more than 50 percent of the total interest in both partnership capital and profits,

\* \* \*

Upon the acquisition of such direct or indirect ownership or control, all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership.

Based on the foregoing, Husband, as the sole surviving partner in the HW Partnership and the devisee or heir entitled to receive ownership of more than 50% of the total capital and profits interests, acquired control of the Partnership upon the deceased partner's (Wife's) death.

The question is whether Section 63 is also applicable to exclude this transfer to Husband from change in control under Section 64(c). As you are undoubtedly aware that there has been some controversy among assessors and taxpayers in recent years focusing on the application of Section 63 to transfers of stock, partnership or other interests in legal entities. As per the last substantive amendment to Section 63 in 1981 ( AB 152), the interspousal exclusion now reads in pertinent part as follows:

**"Notwithstanding any other provision in this chapter, a change in ownership shall not include any interspousal transfer, including, but not limited to:"**

\* \* \*

**"(e) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of such spouse in the legal entity in connection with a property settlement**

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or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained."

agreement or a decree of dissolution of a marriage or legal separation."

Already codified in Section 63 at that time was subdivision (b) which excludes from change in ownership:

"(b) Transfers which take effect upon the death of a spouse."

This amendment significantly expanded the already broad interspousal exclusion. In recommending the broader language of AB 152 to the Senate Committee on Revenue and Taxation, the State Board of Equalization stated in its Legislative Analysis on August 13, 1981, that the intent of this language was as follows:

"4. Spousal Exclusion (Section 63)

Provides that exclusion takes precedence over all other provisions of the chapter, and that the distribution of a legal entity's property (e.g., corporation, partnership) upon divorce is included within this exclusion."

"The first change is clarifying of the original intent; by formerly specifying only certain sections, the implication was that any section not so specified would overrule the spousal exclusion. This was never intended.

The second change also clarifies the existing exclusion as it applies to property settlement agreements."

Shortly thereafter, the question of the proper application of Section 63 arose with respect to what action an assessor should take when, upon the death of husband, the wife acquired all of the ownership interests in husband's stock (and ultimately in the control of the corporation) and in the property, even though both the stock and property were held as community property until husband's death. By letter from Verne Walton on February 27, 1981, (copy enclosed), the Board's staff stated that "Such a transfer would be excluded from reappraisal." Although the shares were held solely in husband's name, the transfer of all of the shares to wife upon the husband's death was excluded from change in ownership and change in control (Section 64(c)) under the interspousal exclusion. The basic principle underlying Section 63 was that shares, legal entity interests, and/or any real property held by spouses as "community property" were treated as the property of each of them as separate persons. Thus, we have consistently concluded that whenever there is an acquisition or a transfer of stock or other interests between spouses, no change in ownership results. The basic application made in 1981 has been followed over the years.

Subsequent advice from our staff in numerous opinion letters and letters to assessors, such as Letter to Assessors Only No. 83/17, and Letter to Assessors No. 85/33, reflects the principle stated in the Task Force recommendations and derived from the Legislature's intention regarding the interspousal exclusion. The purpose of these advice letters was to properly interpret and

apply the interspousal exclusion, not to explain the legal distinctions between community property and joint tenancy concepts. Thus, Letter to Assessors No. 85/33 states that where a husband and wife acquire an ownership interest in a legal entity as "community property," the acquisition, for property tax purposes, should be treated in the same manner as an acquisition where the husband and wife take title as "joint tenants," that is, separate individuals each owning 50% of the ownership interests in question.

Later, in General Election of Nov. 4, 1986, the particular language of the interspousal exclusion found in Article XIII A, Section 2(g) of the Constitution was adopted. This language was slightly different than the language already in Section 63, in that it expressly stated that "... 'change in ownership' shall not include the purchase or transfer of real property between spouses..." (Art. XIII A, Sec. 2(g).) In contrast, Section 63 provided for the exclusion of "any interspousal transfer" as noted above. The stated purpose of Proposition 58 which added this exclusion to the Constitution was, among other things, "to place the existing statutory treatment of property transfers between spouses into the Constitution." ("Analysis of Legislative Analyst," Ballot Pamphlet, Proposed Amendment to California Constitution with Arguments to Voters, Taxation [of] Family Transfers, General Election (Nov. 4, 1986), p. 24.) The problem arose because the "existing statutory treatment of property transfers between spouses" clearly excluded "any interspousal transfer," Section 63, whereas, the language in the constitutional amendment seems to limit the exclusion to spousal real property transfers only.

Some assessors have interpreted the constitutional language as a contradiction to the plain meaning of the phrase "any interspousal transfer" in Section 63, and noted that in case of doubt, the constitutional provision should take precedence over the statute. However, all of the historical evidence, as well as legal principles, establish that there is no inconsistency. First, there is no indication in the ballot pamphlet for the constitutional amendment or in any of the legislative history for the Proposition, that Proposition 58 would modify existing law and narrow its application to only literal real property transfers between spouses. Secondly, the interspousal exclusion in Section 63 experienced a long history (1979) prior its 1986 incorporation into the Constitution under Proposition 58. During this time, substantial clarity regarding its interpretation and application had developed, both from the advice of our staff and decisions made by assessors, that established a standard treatment for any transfers of interests in legal entities between spouses as excluded from change in ownership. Finally, court decisions dealing with similar problems in property tax matters have held that the terms used in a constitutional amendment must be construed in the light of their meaning at the time of adoption of the amendment. In Larson v. Duca (1989) 213 Cal.App.3d 324, 329, the court dealt specifically with Proposition 58 and stated,

"In interpreting constitutional measures enacted by the voters, we must also follow the rule that 'the electorate would be deemed to know' the state of the law prior to the enactment. 'The adopting body is presumed to be aware of existing laws and judicial construction thereof.' [citation]"

Thus, in our view there is no inconsistency or contradiction of terms between the language in Section 63 and in Art. XIII A, Sec. 2(g). The constitutional provision merely restates in

different phraseology the same concept expressed the statute, that "any interspousal transfer" is excluded from change in ownership. Moreover, this issue was again addressed in the Board's recently adopted proposed revisions to Rule 462.220 (attached), where it is now expressly stated in subdivision (b) that transfers of ownership interests in legal entities which result in one spouse obtaining "control" as defined in Section 64(c), shall not constitute a change in ownership under the interspousal exclusion. The rule revision reflects the long-standing position of staff and the legislative intent underlying Section 63, as previously explained, that the broad language of the statute requires any transfers of either legal entity interests or real property interests between spouses to be excluded from change in ownership.

By way of application, where the death of a partner (Wife) triggers the dissolution of the partnership, and the deceased partner's interest is immediately transferred to her spouse (Husband) who becomes the majority surviving partner, the interspousal exclusion in Section 63 and Rule 462.220 (b) is applicable to preclude a change in control and reappraisal under Section 64(c), even though the surviving spouse/partner owns more than 50% of the partnership interests.

**3. Distribution of real property from HW Partnership to remaining four partners as tenants-in-common excluded under Section 62(a)(2) .**

The final step upon dissolution, per HW Partnership Agreement, was to liquidate its assets, including its real property, and to distribute such property 97% to Husband, as the sole beneficiary of the Marital Trust and the Survivor's Trust, and 1% each to Sons. During the time of the Partnership's winding up and dissolution, Husband held more than 50% of the total capital and profits interests in HW Partnership, 48.5% as the sole beneficiary of the irrevocable Marital Trust and 48.5% as the sole beneficiary of the revocable Survivor's Trust, and each Son held 1% of the total HW Partnership interests. Because of the application of the interspousal exclusion, discussed above, there was no change in control under Section 64(c).

Therefore, when HW Partnership finally liquidated and distributed to Husband as the sole beneficiary of each Trust, a 97% undivided co-tenancy interest and to each Son a 1% co-tenancy interest in the Partnership real property, Section 62 (a)(2) is applicable to exclude these transfers from a change in ownership. It appears that the real property interests transferred were in exactly the same proportionate shares to the percentage interests the Husband and each Son held in the HW Partnership from the date of Wife's death, so that only the method of holding title to the property changed.

However, if the real property interests were not proportionate, e.g., if someone in addition to Husband was a present beneficiary under the irrevocable Marital Trust, then the interspousal exclusion in Section 63 would not be applicable to exclude the real property distribution to Husband from change in ownership, since this was a transfer from the Partnership to Husband (not Wife to Husband). Moreover, Section 63.1 would not be applicable to exclude the real property distributions to each Son from change in ownership, since the Partnership is not a "parent" or natural person (eligible transferor) within the statutory definition of that term.



August 15, 1997

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on the present law and facts set forth herein. Therefore, they are not binding on any person or entity.

Sincerely,



Kristine Cazadd  
Tax Counsel

Attachments

KEC:ba

cc:

Mr. James Speed, MIC:63

Mr. Richard Johnson, MIC:64

Ms. Jennifer Willis, MIC:70

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Rule 462.220 CHANGE IN OWNERSHIP -- INTERSPOUSAL TRANSFERS

Notwithstanding any other provision of ~~Sections~~ Rules 460 through 471 ~~of this code~~, a change in ownership shall not include any interspousal transfer, including, but not limited to:

(a) Transfers of ownership interests in legal entities,

(b) Transfers of ownership interests in legal entities resulting in one spouse obtaining control as defined in Section 64(c) of the Revenue and Taxation Code,

Example 1: Husband (H) owns a 30 percent ownership interest in a partnership and wife (W) owns a 30 percent ownership interest in the same partnership. W transfers her interest to H; H now owns a 60 percent ownership interest. There is no change in ownership.

~~(a)~~ (c) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a transfer of such a trust to the spouse of the trustor,

~~(b)~~ (d) Transfers which take effect upon the death of a spouse,

Example 2: H and W each own a 30 percent interest in General Partnership (GP). H and W transfer their respective partnership interests to the HW Revocable Trust. No change in ownership. Trust provides that upon the death of the first spouse: the assets of the deceased spouse, including partnership interests in GP, shall be distributed to "A Trust", and the assets of the surviving spouse, including partnership interests in GP, shall be distributed to "B Trust." Surviving spouse is the sole present beneficiary of both A Trust and B Trust. No change in ownership upon the death of the first spouse.

~~(e)~~ (e) Transfers to a spouse or former spouse in connection with a property settlement agreement, including post-dissolution amendment thereto, or decree of dissolution of a marriage or legal separation, ~~or~~

~~(d)~~ (f) The creation, transfer, or termination, solely between spouses, of any co-owner's interest, or

~~(e)~~ (g) The distribution of property of a corporation, partnership, or other legal entity to a spouse or former spouse having an ownership interest in the entity, in

exchange for the interest of such spouse in the legal entity in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

Note: Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63, 65, 65.1, and 67, Revenue and Taxation Code.

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State of California  
BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization—Property Tax  
Subchapter 4. Equalization by State Board  
Article 3. Taxable Property of a County, City or Municipal Corporation

(i) Rule 462.160 CHANGE IN OWNERSHIP - TRUSTS.

Reference:

~~(1)~~(a) Creation. Except as is otherwise provided in subdivision ~~(2)~~ (b) the transfer by the trustor, or any other person, of real property into a trust is a change in ownership of such property at the time of the transfer.

~~(2)~~(b) Exceptions. A transfer to a trust is not a change in ownership upon the creation of or transfer to a trust if:

~~(A)~~(1) Trustor-Transferor Beneficiary Trusts. The trustor-transferor is the sole present beneficiary of the trust; provided, however, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor are present beneficiaries of the trust.

~~(B)~~(2) Revocable Trusts. The transfer of real property or an ownership interest(s) in a legal entity by the trustor(s) to a trust which is revocable by the trustor(s); provided, however, a change in ownership does occur at the time the revocable trust becomes irrevocable unless the trustor-transferor remains or becomes the sole present beneficiary.

~~(C)~~(3) Trustor Reversion Trusts. The trustor-transferor retains the reversion, and the beneficial interest(s) of person(s) other than the trustor-transferor does not exceed 12 years in duration.

~~(D)~~(4) Interspousal Trusts. The exemption afforded interspousal transfers is applicable; provided, however, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor's spouse are beneficiaries of the trust.

~~(E)~~(5) Proportional Interests. The transfer is to a trust which results in the proportional interests of the beneficiaries in the property remaining the same before and after the transfer.

~~(F)~~(6) Other Trusts. The transfer is from one trust to another and meets the requirements of ~~(A)~~(1), ~~(B)~~(2), ~~(C)~~(3), ~~(D)~~(4), or ~~(E)~~(5).

~~(3)~~(c) Termination. Except as is otherwise provided in subdivision ~~(4)~~(d), the termination of a trust, or portion thereof, constitutes a change in ownership at the time of the termination of the trust.

~~(4)~~(d) Exceptions. A transfer resulting from the termination of a trust is not a change in ownership if:

~~(A)~~(1) Prior Reappraisal. Termination results in the distribution of trust property according to the terms of the trust to a person or entity who received a present interest (either use of or income from the property) causing a reappraisal when the trust was created or when it became irrevocable; provided, however, another change in ownership also occurs when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity other than the present beneficiary.

~~(B)~~(2) Revocable Trusts. Termination results from the trustor-transferor's exercise of the power of revocation and the property is transferred by the trustee back to the trustor-transferor.

~~(C)~~(3) Trustor Reversion Trusts. The trust term did not exceed 12 years in duration and, on termination, the property reverts to the trustor-transferor.

~~(D)~~(4) Interspousal Trusts. The exemption afforded interspousal transfers is applicable.

~~(E)~~(5) Proportional Interests. Termination results in the transfer to the beneficiaries who receive the same proportional interests in the property as they held before the termination of the trust.

~~(F)~~(6) Other Trusts. Termination results in the transfer from one trust to another and meets the requirements of ~~(A)~~(1), ~~(B)~~(2), ~~(C)~~(3), ~~(D)~~(4), or ~~(E)~~(5) of subdivision ~~(2)~~(b).

STATE BOARD OF EQUALIZATION

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No.

March 5, 1985

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G. A. LEGAL

TO COUNTY ASSESSORS:

CONTROL AND OWNERSHIP OF LEGAL ENTITIES  
ACQUIRED AS "COMMUNITY PROPERTY"

This letter is to inform you that it is the opinion of the Board's legal staff that where a husband and wife acquire an ownership interest in a legal entity as "community property," the acquisition, for property tax purposes, should be treated in the same manner as an acquisition where husband and wife take title as "joint tenants." See County Assessors' Only Letter No. 83/17, dated July 15, 1983; OWNERSHIP INTERESTS IN ENTITIES HELD BY SPOUSES AS JOINT TENANTS (copy enclosed).

Sincerely,

*Vernie Walton*

Vernie Walton, Chief  
Assessment Standards Division

VW:gr

Enclosure

## STATE BOARD OF EQUALIZATION

1027 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)

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July 15, 1983

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KENNETH CORY  
Controller, Sacramento

DOUGLAS D. BELL  
Executive Secretary

CAO 83/17

TO COUNTY ASSESSORS ONLY:

OWNERSHIP INTERESTS IN ENTITIES HELD BY SPOUSES  
AS JOINT TENANTS

The question recently arose as to the proper treatment of a situation in which a husband and wife acquire ownership interests in a legal entity as joint tenants. The Board's legal staff has advised that a husband and wife holding ownership interests in legal entities as joint tenants are to be considered separate individuals, each owning 50% of the ownership interests in question. The fact they are married cannot be used to attribute the ownership of one spouse to that of the other so as to find one spouse has directly and indirectly acquired more than 50% ownership in a legal entity.

The estate of joint tenancy presumes that all of the joint tenants own equal undivided shares. For example, two joint tenants each own 50%, three joint tenants each own 33-1/3%, four joint tenants each own 25%. There will always be at least two joint tenants to share equally in the ownership of the property owned by the joint tenants. Thus, if all the outstanding voting stock of a corporation is acquired by a husband and wife as joint tenants, they each own 50% of voting shares equally, not more than 50%. Shares owned by one spouse cannot be attributed to the other. Consequently, while all of the shares have been transferred, and ownership of the shares has changed, no single person has acquired "control" within the meaning of Revenue and Taxation Code Section 64(c). The transaction would be excluded from reappraisal by Section 64(a).

Sincerely,



Verne Walton, Chief  
Assessment Standards Division

VW:ga

February 27, 1981

Honorable Kenneth M. Stedman  
Lassen County Assessor  
Courthouse, Room 104  
Susanville, California 96130

Dear Ken:

In your letter of January 23, 1981 you asked what action would be called for in the following situation. A husband and wife form a wholly owned corporation. For reasons unknown, the stock was held only in the husband's name. The husband dies and the wife receives the stock through probate.

Such a transfer would be excluded from reappraisal. It appears that the property was community property and that the stock would also be community property, even though held only in the husband's name.

If you have any further questions regarding this, please feel free to contact us further.

Sincerely,

Verne Walton, Chief  
Assessment Standards Division

VH:sk

cc: Mr. Glenn Rigby

(Prepared by: Gene Palmer)